

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal From The Michigan Court of Appeals
Honorable Bill Schuette, Presiding

HARTMAN & EICHHORN BUILDING
CO., INC., a Michigan corporation,
Plaintiff/Counterdefendant,

Supreme Court Docket No. 129733

v

Court of Appeals Docket No. 249847

STEVEN DAILEY and JANINE
DAILEY, a married couple; and ABN-
AMRO d/b/a STANDARD FEDERAL
BANK, jointly and severally,
Defendants,

Oakland County Circuit Court
Case No. 01-032203-CK

and

STEVEN DAILEY and JANINE
DAILEY,
Counterplaintiffs/Third-Party
Plaintiffs/Appellees,

v

JEFFRY R. HARTMAN, an individual,
Third-Party Defendant/Appellant.

**SUPPLEMENTAL BRIEF ON APPEAL
OF APPELLANT, JEFFRY R. HARTMAN**

Robert S. Rollinger (P27237)
ROBERT S. ROLLINGER, P.C.
Attorney for Plaintiff/Counterdefendant and Third-
Party Defendant/Appellant
30500 Northwestern Hwy, Ste. 500
Farmington Hills, MI 48334
(248) 626-1133

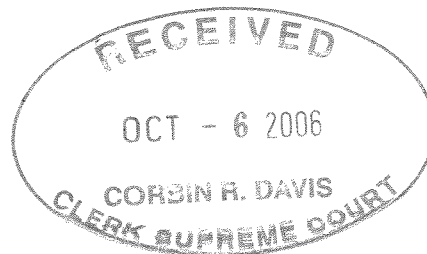


TABLE OF CONTENTS

	<u>Page</u>
INDEX OF AUTHORITIES	ii
I. ARGUMENT	1
II. CONCLUSION AND RELIEF REQUESTED	2

INDEX OF AUTHORITIES

CASES

Page

<i>Hartman & Eichhorn Bldg Co, Inc v Dailey</i> , 266 Mich App 545; 701 NW2d 749 (2005)	1
<i>Majic Window Co v Rolando</i> , unpublished opinion per curiam of the Court of Appeals, issued July, 27, 2006 (Docket No. 259746)	1
<i>Roberson Builders Inc v Larson</i> , unpublished opinion per curiam of the Court of Appeals, issued September 19, 2006 (Docket No. 260039)	1
<i>Smith v Globe Life Ins Co</i> , 460 Mich 446; 597 NW2d 28 (1999)	1, 2

STATUTES

MCL 445.901	1
MCL 445.904(1)(a)	1

I. ARGUMENT

In the present case, leave has been granted, the Briefs on Appeal have been filed, and the parties are currently awaiting scheduling of oral argument. Third-Party Defendant/Appellant, Jeffrey R. Hartman (“Hartman”) now files this Supplemental Brief on Appeal to bring to the attention of this Honorable Court recent opinions issued by the Court of Appeals that continue to compound the error the Court of Appeals made in the present case below.

First, in *Roberson Builders Inc v Larson*, unpublished opinion per curiam of the Court of Appeals, issued September 19, 2006 (Docket No. 260039), the Court of Appeals held that the Michigan Consumer Protection Act (the “MCPA”), MCL 445.901, *et seq.*, applies to residential builders. See Appendix, pp 1a-4a. The court did this despite acknowledging this Court’s decision in *Smith v Globe Life Ins Co*, 460 Mich 446; 597 NW2d 28 (1999), and despite acknowledging that the issue of applicability of the MCPA to residential builders is pending before this Court.

Second, in *Majic Window Co v Rolando*, unpublished opinion per curiam of the Court of Appeals, issued July 27, 2006 (Docket No. 259746), the Court of Appeals was again constrained to follow its own wrong decision in the present case below, *Hartman & Eichhorn Bldg Co, Inc v Dailey*, 266 Mich App 545; 701 NW2d 749 (2005). See Appendix, pp 5a-8a. The panel in *Majic*, *supra*, did not even mention that the issue of whether residential builders are exempt from the MCPA is pending before this Court.¹

¹ Of course, it is possible that the parties in *Majic* did not raise the issue of the MCPA exemption in MCL 445.904(1)(a) before the trial court or the Court of Appeals.

As these two recent Court of Appeals opinions demonstrate, this Court should act quickly in deciding the present case in favor of Hartman because the issue presented by this appeal frequently arises. Moreover, the Court of Appeals is continually making the legal error that the MCPA applies to licensed residential builders, and continually disregarding this Court's precedential decision in *Smith, supra*.

II. CONCLUSION AND RELIEF REQUESTED

For all the foregoing reasons, Third-Party Defendant/Appellant, Jeffry R. Hartman respectfully requests that this Court reverse the Court of Appeals and reinstate the trial court's grant of summary disposition in his favor.

ROBERT S. ROLLINGER, P.C.
Attorney for Plaintiff/Counterdefendant and Third-
Party Defendant/Appellant, Jeffry Hartman

Date: October 5,, 2006 By: Robert S. Rollinger
Robert S. Rollinger (P27237)
30500 Northwestern Hwy, Ste. 500
Farmington Hills, MI 48334
(248) 626-1133